

172857

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SC PUBLIC SERVICE
COMMISSION

February 23, 2005

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Application of Development Service, Inc. for Approval of New Schedule
of Rates and Charges for Sewerage Service Provided to Residential and
Commercial Customers in all Areas Served
PSC Docket No.: 2004-212-S

Dear Charles:

Enclosed for filing please find thirteen (13) copies of the Office of Regulatory Staff's Petition for Rehearing or Reconsideration and Motion for Clarification. Please date stamp the extra copy enclosed and return it to me via our delivery person.

Please let me know if you have any questions.

Sincerely,


Shannon Bowyer Hudson

SBH/wot
Terreni.ltr.5(2-24-05).doc

cc: Charles Cook, Esq.

Enclosures

172857
ACCEPTED
Legal *AB* 2-25-05

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-212-S

RECEIVED
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SC PUBLIC SERVICE
COMMISSION

IN RE: Application of DEVELOPMENT)
SERVICE, INC. for Approval of)
New Schedule of Rates and Charges)
For Sewage Service Provided to)
Residential and Commercial)
Customers in all areas Served.)
_____)

PETITION FOR REHEARING OR
RECONSIDERATION AND
MOTION FOR CLARIFICATION

The Office of Regulatory Staff ("ORS"), pursuant to S.C. Code Ann. §§ 58-5-330 and 1-23-10, et seq. (as amended) and the applicable rules and regulations of the Public Service Commission of South Carolina (the "Commission"), requests that the Commission reconsider certain matters addressed in Order No. 2005-42 (the "Order"), issued on February 2, 2005 in the above-referenced docket. ORS received the Order on February 4, 2005. In support of this Petition and Motion, ORS states as follows:

I. Introduction

On February 2, 2005, the Commission issued its Order No. 2005-42 in this docket setting forth new rates pursuant to a two-phased plan ("Phase-I" and "Phase-II") for Development Service, Inc. ("DSI") to charge its wastewater customers. The Phase-I rate increase is to be implemented "during construction" at Bush River Utilities, Inc. ("BRUI"), DSI's sister company. The Phase-II rate increase is to be implemented after BRUI's construction and after DSI has met certain requirements. These requirements include DSI being audited by ORS, being in compliance with all SCDHEC requirements, and maintaining its books in accordance with the

RETURN DATE: *OK*
SERVICE: *OK*

NARUC Uniform System of Accounts. ORS does not contest the Commission's decision to grant rate relief to DSI in a two-phased approach. ORS also does not contest the Commission's requirement that DSI be in compliance with all SCDHEC regulations or that DSI maintain its books and records according to the NARUC Uniform System of Accounts prior to Phase-II of the rate increase. ORS, however, requests that the Commission reconsider the time-frame set forth for DSI to post the required performance bond. ORS also requests that the Commission clarify the scope of the audit it has ordered ORS to conduct prior to DSI implementing Phase-II of its rate increase.

II. The Commission Erred By Requiring DSI To Post The Performance Bond By The End Of BRUI's Construction, i.e. Phase-I.

By Order No. 2005-42, the Commission held that DSI must provide a \$100,000 bond by the end of BRUI's construction phase, i.e. Phase-I, after finding that DSI's current \$10,000 performance bond "is insufficient and does not meet the requirements of S.C. Code Ann. §58-5-720 (Supp. 2004)." [Pp. 28-30]. The Commission noted the bond is required to protect the public and to insure that the utility provides adequate and proper service. [P. 29].

While ORS agrees that DSI's current \$10,000 bond is insufficient and does not meet statutory requirements, ORS believes the Commission erred in not requiring DSI to obtain the required bond immediately.

S.C. Code Ann. Section 58-5-720 provides in relevant part

The commission shall, before the granting of authority or consent to any water or sewer utility regulated by the commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, prescribe as a condition to the consent or approval that the utility shall file with the commission a bond with sufficient surety, as approved by the commission, in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars payable to the commission and conditioned upon the provision by

the utility of adequate and sufficient service within its service area
.... [Emphasis added]

26 S.C. Code Ann. Regs. 103-512.3 states:

Prior to operating, maintaining, acquiring, expanding or improving any utility system, for which Commission approval is required, the utility shall have on file with the Commission a performance bond with sufficient surety.... [Emphasis added].

S.C. Code Ann. §58-5-720 states sufficient surety is an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars.

26 S.C. Code Ann. Regs. 130-512.3.1 provides guidance in designating a sufficient surety amount within the minimum and maximum limits and states in part:

Based upon the expenses of the utility as submitted in the annual report and as reviewed and adjusted by Staff, the Staff shall make recommendations for increasing or reducing the amount of the bond within the minimum and maximum limits as prescribed by statute.

It is undisputed that DSI is a sewer utility “operating” in Richland County. [P. 4]. As an “operating” utility, DSI is required by South Carolina statute and the Commission’s own regulations to have a minimum bond of \$100,000. Because DSI currently has only a \$10,000 bond, it is not in compliance with South Carolina law at the present time. The statute requiring a minimum bond of \$100,000 became effective on June 1, 1999. The bond is required to ensure that the utility provides adequate and sufficient service to its customers. Thus, it may be said that the bond is required as protection for the public and the public interest. Unlike the Commission’s regulations, which the Commission, by virtue of 26 S.C. Code Regs, 103-501(3), may waive upon a showing that “compliance with any of the[se] rules and regulations introduces unusual difficulty” and “a finding by the Commission that such waiver is in the public interest,” the Commission has no authority to waive a statutory requirement. Because the Commission may

not waive the requirements of S.C. Code Ann. § 58-5-720 (Supp. 2004), DSI, as an “operating” utility, must post a bond with sufficient surety in an amount not less than \$100,000 and not more than \$350,000, DSI should not be allowed to wait and obtain the required bond “by the end” of BRUI’s construction, i.e. by the end of Phase-I. [P. 29 and 34]. Instead, DSI should be required to comply with the statutory requirements of S.C. Code Ann. § 58-5-720 (Supp. 2004) and to post the required bond within an immediate and definite time period.

As further argument against allowing DSI to wait and obtain the required bond “by the end” of BRUI’s construction, ORS asserts that it is unclear in the Order how to establish when construction is complete at BRUI. Construction at BRUI has not begun and could conceivably take years to complete. By conditioning the filing of the statutorily mandated bond on completion of construction taking place at BRUI, the Commission would be allowing DSI to operate with an insufficient and non-compliant \$10,000 bond for an indeterminate amount of time. The dead-line set forth by the Commission for DSI to post its required bond is ambiguous and uncertain.¹ Accordingly, ORS requests that the Commission set forth a more definite and immediate time period.

Finally, the filing of DSI’s bond should not be linked to construction at another utility -- BRUI. The Commission has recognized that one of the bond’s purposes is to protect the public and to insure that the utility provides adequate and proper service. The utility at issue here is DSI. By requiring DSI to have the appropriate bond “by the end” of BRUI’s construction is not affording DSI’s customers any immediate protection since there is no requirement in the Commission’s Order or incentive for DSI to obtain the ordered bond until construction at BRUI

¹ While BRUI has pledged that it will make the necessary upgrades to its wastewater treatment facility, there is a possibility that the contemplated construction may never be completed. Because the possibility exists that the construction might never be completed, the dead-line set in the Order No. 2005-42 by which DSI must post the statutorily required bond may never come to fruition.

is nearing completion. As illustrated above, DSI's customers are likely to be without the additional \$90,000 protection afforded by the statutorily required bond for a number of months if not years. By requiring DSI to obtain the bond immediately or within a reasonable number of days would comply with the statute, remove the unnecessary link to BRUI's construction, eliminate uncertainty, and provide the protection to DSI's customers required by the statute.

Accordingly, ORS requests that the Commission reconsider its order that DSI "comply with the bonding requirement by completion of construction of Bush River's new treatment facility," and to provide a more reasonable, definite and immediate time period for DSI to post the \$100,000 bond. [P. 30].

III. ORS Requests That The Commission Clarify Its Order With Respect To The Audit It Ordered ORS To Perform On DSI.

The Commission ordered DSI to undergo an audit from ORS before implementing Phase-II of the rate increase. [P. 34]. In turn, the Commission also ordered ORS to certify that it performed the required audit and the results of that audit. [Id].

DSI's Phase-II rates may be implemented only after construction is complete at BRUI and certain requirements, such as the ORS audit, have been met. Accordingly, ORS respectfully requests clarification and direction on the timing, scope, and certification process of the audit.

ORS requests that the Commission state whether ORS or DSI is to initiate the audit. Since the rate increase allowed in Phase-II is for the benefit of DSI, ORS suggests that the Commission order the audit to begin at the written request of DSI with the stated requirement that DSI file its written request for the audit with the Commission and a copy mailed to ORS.

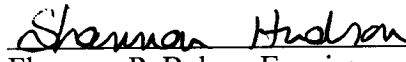
ORS requests parameters on the scope of the audit. Currently, ORS is ordered to audit the "Commission directives in this matter." [P. 34]. ORS reads these matters as DSI posting the Commission ordered performance bond and DSI maintaining its books and records in accordance

with the NARUC Uniform System of Accounts. [Pp. 28, 31 and 34]. The Commission also specifically ordered ORS to audit DSI's plant expenditures. [Pp. 26-27]. Although not specifically addressed in the Order, ORS also requests direction on whether it should audit 1) DSI's revenues, expenses and allocations, 2) DSI's collection practices to determine if it is collecting revenues to achieve the operating margin the Commission deemed appropriate, 3) whether DSI is in accordance with South Carolina law and the Commission's rules and regulations, and 4) any other matters not addressed in the Order or this Petition and Motion.

Lastly, ORS requests that the Commission set forth directives for ORS's report to the Commission certifying the audit of DSI was performed and setting forth the results of the audit. Specifically, the ORS requests that the directives set forth the appropriate format, content, and any other matters the Commission wishes to have for review.

WHEREFORE, having fully set forth its grounds for this Petition and Motion, ORS respectfully requests that the Commission reconsider Order No. 2005-42, as set forth herein, and grant such other relief as the Commission deems just and proper.

February 24, 2005



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